

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

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*In the Matter of:* )  
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 Springfield Gaming and Redevelopment, LLC )  
 \_\_\_\_\_ )

**PHASE I SUITABILITY DECISION**

Springfield Gaming and Redevelopment, LLC (hereinafter “Applicant”)<sup>1</sup> submitted a Phase 1 application for a gaming license to the Massachusetts Gaming Commission (hereinafter “Commission” or “MGC”). This decision results from the adjudicatory proceeding conducted by the Commission on September 18 and 19 at the Boston Convention and Exhibition Center, 415 Summer Street, Boston, MA. At the direction of the Chair, the entire Commission presided over the matter. At the hearing, the applicant was represented by Jonathan Albano, Esq. and John Snyder, Esq. from the firm of Bingham McCutchen. The Investigations and Enforcement Bureau (“IEB”) was represented by David Mackey, Esq. and Mina Makarious, Esq., from the firm of Anderson & Kreiger. For the reasons set forth below, the Commission finds by a unanimous vote that Applicant, Springfield Gaming and Redevelopment, LLC has met its burden of proof and accordingly is issued a **POSITIVE** determination of suitability in accordance with 205 CMR 115.

I. Background

The application for a gaming license consists of two parts. See 205 CMR 110.01. The first, called the Phase 1 application, essentially focuses on the qualifications and suitability of the Applicant and its qualifiers to hold a gaming license. See G.L. c. 23K, §12(a) and 205 CMR 115.00 through 117.00. The Phase 2 application focuses on the site, design, operation and other attributes of the gaming facility itself. See generally 205 CMR 118.00 and 119.00. “The commission shall not entertain a Phase 2 application for any applicant unless and until the commission has issued a positive suitability determination on that applicant.” 205 CMR 110.01; see also 205 CMR 115.05(4) and 118.01(1) (a). This hearing involved the Phase 1 segment of the process.

The Applicant submitted a Phase 1 application on January 15, 2013. Upon receipt of the application, the Commission instructed the IEB to commence an investigation into the suitability of the Applicant. See G.L. c.23K, 12(a). The investigation was to include all qualifiers associated with the Applicant. See G.L. c. 23K, §14 and 205 CMR 116.00. The IEB conducted such an investigation and reported its findings and recommendations to the Commission by way

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<sup>1</sup> Penn National Gaming, Inc. (“Penn National”) is the ultimate parent company of Springfield Gaming and Redevelopment, LLC. Accordingly, the suitability investigation primarily focused on the qualifications of Penn National.

of an Investigative Report (hereinafter the “Report”). See 205 CMR 115.03(2). It should be noted that Applicant originally filed its Phase 1 application with the intent to apply for a Category 1 license for a gaming establishment to be located in Springfield, MA. The City of Springfield, after a competitive process, notified Applicant on April 30, 2013 that it has selected Blue Tarp reDevelopment, LLC, a subsidiary of MGM Resorts International, as the proposed applicant from Springfield. In June, 2013, Applicant notified the Commission that it wished to continue in the suitability process because it was considering applying for a Category 2 slots license. On July 11, 2013, Applicant announced plans to locate a slots facility in Tewksbury, MA. On August 20, 2013, a special town meeting was held in Tewksbury to vote on a proposed zoning change which was required for Applicant’s proposed slots facility; the town meeting members voted to defeat the proposed zoning change. On September 4 and September 6, 2013, the Applicant appeared before the Commission to advise the Commission that Applicant had entered into an option to purchase the assets of Ourway Realty, LLC, the owner of the Plainridge Racecourse (that was previously found unsuitable by the Commission by decision dated August 5, 2013), and to request that the Commission allow Applicant to assume the host community agreement previously executed between Ourway Realty, LLC and the town of Plainville, MA. By unanimous vote, the Commission approved the assignment and assumption of the host community agreement and allowed Applicant to proceed with the municipal vote scheduled for September 10, 2013. The voters approved the referendum on September 10, 2013.

The Report contains information relative to the following areas:

- (1) the integrity, honesty, good character and reputation of the applicant;
- (2) the financial stability, integrity and background of the applicant;
- (3) the business practices and the business ability of the applicant to establish and maintain a successful gaming establishment;
- (4) whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions;
- (5) whether the applicant, at the time of application, is a defendant in litigation involving its business practices;
- (6) the suitability of all parties in interest to the prospective gaming license, including affiliates and close associates and the financial resources of the applicant; and
- (7) whether the applicant is disqualified from receiving a license under G.L. c.23K, §16.

“All applicants for a Phase 1 suitability determination must establish their qualifications by clear and convincing evidence.” 205 CMR 115.01(2); see also G.L. c.23K, §13(a). “Clear and convincing proof involves a degree of belief greater than the usually imposed burden of proof by a fair preponderance of the evidence, but less than the burden of proof beyond a reasonable doubt imposed in criminal cases. It has been said that the proof must be ‘strong, positive and free from doubt’, and ‘full, clear and decisive.’” Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 871 (1975) (internal citations omitted).

A copy of the Report was provided to the applicant along with a notice of this adjudicatory proceeding. See 205 CMR 115.04(1). The adjudicatory hearing was noticed for and convened on the Commission’s own initiative on September 18, 2013 and continued on September 19,

2013. See 205 CMR 115.04(3). Karen Wells, the Director of the Bureau, appeared and testified at the hearing on behalf of the Bureau. Peter M. Carlino, Frank T. Donaghue, Wesley R. Edens, Jordan B. Savitch, Steven Snyder and Thomas Auriemma appeared and testified on behalf of Applicant. All witnesses were duly sworn and found to be credible.

The Commission closed the adjudicatory hearing on September 19, 2013.

## II. Exhibits

The exhibits identified below were taken into evidence at the proceeding without objection. All exhibits were considered, in conjunction with witness testimony, in reaching the final decision.

### IEB Exhibits

- EXHIBIT 1: Pre-hearing Memorandum and MGC Notice re Adjudicatory Proceeding
- EXHIBIT 2: Suitability Investigation for Springfield Gaming & Redevelopment LLC
- EXHIBIT 3: Investigative Report for the MGC, Applicant: Springfield Gaming & Redevelopment LLC (August 26, 2013) (Redacted)
- EXHIBIT 4: Securities and Exchange Commission (“SEC”) Release re: Order Instituting Public Proceedings against Steven T. Snyder, File No. 3-9583 (April 23, 1998)
- EXHIBIT 5: Complaint, *SEC v Snyder*, Civ. A. No. 01-CV-1870 (E.D. PA Apr. 17, 2001)
- EXHIBIT 6: Final Judgment and Order, *SEC v Snyder*, Civ. A. No. 01-CV-1870 (E.D. Pa Apr.17, 2001)
- EXHIBIT 7: Verified Complaint, *Snyder v Meridian Bancorp, Inc.*, Civ. A. No. 01-5253 (Pa Ct. of Common Pleas 2001) (without exhibits)
- EXHIBIT 8: Initial Decision and Order, New Jersey Casino Control Commission, Application of Steven Snyder (April 15, 2002)
- EXHIBIT 9: Media Articles regarding SEC Investigation of Snyder and Meridian
- EXHIBIT 10: Grand Jury Report, *In re The Thirty-First Statewide Investigating Grand Jury*, 18 W.D. Mis. Dkt. 2009 (Penn May 19, 2011)
- EXHIBIT 11: Narrative of Testimony, Frank T. Donaghue (Jan. 18, 2012)
- EXHIBIT 12: Follow up to Interview, Frank T. Donaghue (Feb. 1, 2012)
- EXHIBIT 13: Sworn Interview, Frank T. Donaghue (March 1, 2012)
- EXHIBIT 14: Media Articles re Pennsylvania Gaming Control Board Grand Jury Report
- EXHIBIT 15: *Leon E. W. Intermyer, Inc. v W.C.A.B.*, 571 Pa 189 (2001)
- EXHIBIT 16: Complaint *SEC v Mudd*, Civ. A. No. 11-CIV-9202 (S.D.N.Y. Dec. 16, 2011)
- EXHIBIT 17: Separation Agreement and General Release between Fortress and Mudd (Jan. 2012)
- EXHIBIT 18: Media Articles regarding Mudd resignation from Fannie Mae

### Applicant Exhibits

- EXHIBIT 1: Penn National Gaming, Inc. Form 10K (2/22/13); Form 10K/A (8/8/13)
- EXHIBIT 2: Gaming Compliance Review and Reporting Plan of Penn National Gaming, Inc.
- EXHIBIT 3: Penn National Gaming, Inc. Code of Business Conduct
- EXHIBIT 4: Charter of the Audit Committee of the Board of Directors of Penn National Gaming, Inc.

- EXHIBIT 5: Penn National Gaming, Inc., Board of Directors Nominating and Corporate Governance Committee Charter
- EXHIBIT 6: Penn National Gaming, Inc. schedule for vetting new executive hires
- EXHIBIT 7: Biographical statements of Penn National Gaming, Inc., Executives
- EXHIBIT 8: List of gaming licenses held by Steven T. Snyder, Francis T. Donaghue, Fortress Investment Group LLC, Peter M. Carlino, Tim Wilmott, Jordan Savitch and Wesley Edens
- EXHIBIT 9: April 24, 2002 New Jersey Casino Control Commission Order No. 02-9-5, with Hearing Examiner's April 15, 2002 Initial Decision
- EXHIBIT 10: Fortress Investment Group LLC Forms 8K; March 11, 2011 and December 16, 2011
- EXHIBIT 11: Schedule of SEC yield burning actions
- EXHIBIT 12: Presentation regarding Penn National Gaming, Inc.
- EXHIBIT 13: Biographical Statement of Francis T. Donaghue
- EXHIBIT 14: Biographical Statements of Steve DuCharme and Thomas N. Auriemma
- EXHIBIT 15: 2 Pa. Consol. Stat §704
- EXHIBIT 16: *A.P. Weaver v. Sanitary Water Bd.* 284 A.2d 515, 517 (Pa Cmwlt. 1971)
- EXHIBIT 17: *Gibson v. Workers Compensation Appeal Board*, 861 A.2d 938, 947 (Pa. 2004)
- EXHIBIT 18: *Pocono Manor Investors, LP v Penn Gaming Control Board*, 927 A.2d 209 (2007)
- EXHIBIT 19: Media Article regarding Pennsylvania Gaming Control Board
- EXHIBIT 20: Pennsylvania Gaming Control Board Organization Chart

### III. Findings and Discussion

The Report contains a description of the investigation conducted by the IEB and detailed findings of fact. The Commission generally adopts the findings of fact therein though certain facts are set forth below for purposes of discussing the specific areas of focus at the hearing. The IEB recommended that the Applicant be found suitable subject to the following conditions:

1. That the Applicant present evidence to the Commission that Steven Snyder meets the statutory criteria for suitability given the proceedings filed against Mr. Snyder by the SEC; and
2. That the Applicant present evidence to the Commission regarding its corporate due diligence practices regarding the hiring and retention of executives.

For the reasons set forth below, the Commission finds that the Applicant satisfactorily explained the concerns underlying each condition. On the whole, the Commission finds that the historic business performance of Penn National is, generally above reproach. In conjunction with the financial position of the company, its experience in the industry, and the character of its qualifiers, the Commission issues a positive determination of suitability to the Applicant and its qualifiers.

1. Evidence that Steven Snyder meets the statutory criteria for suitability given the proceedings filed against Mr. Snyder by the SEC.

Beginning in 1998 and continuing through the issuance of a final order in 2001 Steven Snyder, currently the Senior Vice President of Corporate Development of the Applicant, was the subject of an SEC investigation and complaint alleging that Mr. Snyder, while working at Meridian Capital Markets, Inc. (“Meridian”), engaged in the practice of “yield burning.” “Yield burning” as described in the complaint filed by the SEC involves inflating the prices of Treasury securities in order to reduce or “burn” the yield when these securities are purchased as part of the advance refunding of a municipal bond issue. Specifically, the SEC alleged that Mr. Snyder charged excessive mark-ups and that, in certain instances, he provided certifications that essentially falsely represented the manner in which the prices of the securities were determined. Mr. Snyder maintained during the course of the investigation that he engaged in no wrongdoing, followed the rules and procedures of his employer, Meridian, and complied with the Internal Revenue Service arbitrage rules. In 2001 the SEC and Mr. Snyder agreed to settle the matter. The settlement provided that Mr. Snyder would neither admit nor deny the allegations in the SEC complaint; would pay to the United States Treasury the amount of \$279,987; would pay a civil penalty in the amount of \$20,000; and would be banned from the securities industry for three (3) years.

The Commission required Mr. Snyder to testify regarding the SEC allegations. Mr. Snyder was forthright and candid with the Commission and explained in detail the activities that were the subject of the SEC complaint. He answered all questions posed to him. Specifically, Mr. Snyder explained that mark-ups were calculated, consistent with Meridian policy, on a portfolio basis (as opposed to an individual bond basis), when providing the portfolio of securities to clients who were issuing refunding bonds. This form of calculation, he explained, was at the time a generally accepted practice in the industry and his employer, until it was later clarified by the IRS. Mr. Snyder presented evidence regarding the SEC’s actions against other securities firms and individuals on the same issue during the same time period, including the subsequent mark-up restrictions (on an individual bond basis). The Commission also considered the 2002 report from the New Jersey Casino Control Commission regarding Mr. Snyder’s character, honesty and integrity.

As the Commission has noted in past decisions, the New Jersey Casino Control Commission has best described the standard for evaluating the good character, honesty and integrity of an individual applicant. In *In re Bally’s Casino Application*, 10 N.J.A.R 356 (1981), the New Jersey Casino Control Commission stated:

The law requires us to judge each applicant’s character. We find this a most difficult task for several reasons. First “character” is an elusive concept which defies precise definition. Next we can know the character of another only indirectly, but most clearly through his words and deeds. Finally, the character of a person is neither uniform nor immutable.

Nevertheless, we conceive character to be the sum total of an individual’s attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime. We must judge a [person’s] character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record before us. We must focus

particularly on those attributes of trustworthiness, honesty, integrity and candor which are relevant to our inquiry. [10 N.J.A.R. at 393]

Mr. Snyder's candid explanation of the SEC matter, including the context in which the complaint was filed and ultimately settled, which is corroborated and enhanced by the documentary evidence and other witness testimony, is acceptable to the Commission. The evidence demonstrates that Mr. Snyder possesses the attributes of trustworthiness, honesty, integrity, and candor. That is, he is a person of character. Accordingly, the Commission finds Mr. Snyder suitable.

2. Presentation of evidence regarding the Applicant's corporate due diligence practices regarding the hiring and retention of executives.

The IEB in its recommendation expressed concern about the due diligence done by the Applicant and its major investor, Fortress Investment Group LLC before hiring several key executives. The IEB was particularly concerned about the due diligence done before hiring Mr. Snyder whose issues with the SEC are noted above and before hiring Mr. Frank Donaghue, Applicant's Chief Compliance Officer. Certain of Mr. Donaghue's activities were reviewed as part of a grand jury investigation into the actions of the Pennsylvania Gaming Control Board while Mr. Donaghue was its Chief Counsel and those activities were discussed as part of the grand jury's final report. Finally, the IEB expressed concern over the hiring and later resignation of Daniel Mudd as the CEO of Fortress Investment Group LLC. Mr. Mudd was the former CEO of Fannie Mae and is one of the subjects of a complaint filed by the SEC in 2011 alleging that executives of Fannie Mae mislead investors about Fannie Mae's exposure to what is commonly referred to as "subprime" loans.

The Commission heard the testimony of Mr. Jordan Savitch, Mr. Thomas Auriemma and Mr. Peter Carlino regarding Penn National's vetting of applicants for executive positions with the Applicant. In particular, Mr. Savitch and Mr. Auriemma testified to the vetting process that led to Mr. Donaghue's hiring. Mr. Donaghue testified extensively about the activities and matters described in the Pennsylvania Grand Jury report (IEB Exhibit no. 10) and his role in those matters. The Commission finds that Mr. Donaghue testified in a candid and forthright manner and answered all questions put to him by the Commission. Ultimately, most if not all of the issues discussed in the Grand Jury report relative to Mr. Donaghue's involvement in the issuance of gaming licenses in Pennsylvania implicated the wisdom of several legal judgments he made in his capacity as Chief Counsel; he was not accused of intentional wrongdoing. Consequently, the Commission has not drawn any negative inference solely from the fact that Mr. Donaghue was called to testify before the grand jury. In addition, Applicant submitted written evidence (Applicant Exhibits No. 3, 4, 5 and 6) regarding the process used to vet executive new hires. The Commission finds that based "upon the sum total of an individual's attributes" Mr. Donaghue has exhibited the appropriate good character, honesty and integrity. After review of the evidence, the Commission finds Mr. Donaghue suitable and finds Applicant's due diligence practices in vetting executive new hires to be acceptable.


The Commission heard the testimony of Mr. Wesley Edens regarding the hiring and later resignation of Mr. Daniel Mudd as the CEO of Fortress Investment Group, LLC ("Fortress"). Mr. Edens testified in a candid and forthright manner. While the Commission believes that Fortress should have considered the appearance that the allegations against Mr. Mudd created, the Commission is satisfied that Fortress when apprised of the complaint filed against Mr. Mudd took all appropriate actions to separate Mr. Mudd from the company. Ultimately, though the wisdom of the decision to hire Mr. Mudd can reasonably be questioned, it is not a decision that leads to a negative finding of suitability of Mr. Edens or Fortress.


#### IV. Conclusion


Based upon the testimony provided to the Commission as well as the exhibits provided by the IEB and the Applicant the Commission finds that the Applicant has met the burden of proving by clear and convincing evidence that it meets the standards for suitability under M.G.L. 23K §12. In light of this positive determination of suitability, the Applicant is eligible to submit an RFA-2 application in accordance with 205 CMR 118.01(1).

**SO ORDERED.**

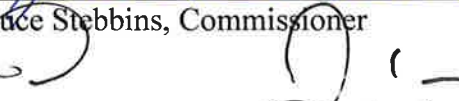
#### MASSACHUSETTS GAMING COMMISSION

By:   
Stephen P. Crosby, Chairman

By:   
Gayle Cameron, Commissioner

By:   
James F. McHugh, Commissioner

By:   
Bruce Stebbins, Commissioner

By:   
Enrique Zuniga, Commissioner

DATED: October 2, 2013